

STATE OF MICHIGAN
COURT OF APPEALS

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF NILES,

UNPUBLISHED

May 1, 2003

No. 234855

Tax Tribunal

LC No. 00-271732

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF BRONSON,

Respondent-Appellee.

No. 235147

Tax Tribunal

LC No. 00-271731

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF UNION,

Respondent-Appellee.

No. 235148

Tax Tribunal

LC No. 00-271729

PRIMESTAR, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF BENTON,

Respondent-Appellee.

No. 235149

Tax Tribunal

LC No. 00-271733

Before: Murphy, P.J., and Owens and Schuette, JJ.

PER CURIAM.

In these consolidated Tax Tribunal cases, petitioner appeals as of right the November 14, 2000, order of the hearing referee dismissing petitioner's appeal for lack of jurisdiction based upon petitioner's failure to appeal to the local board of review. We affirm.

I. Facts

Petitioner owns medium power satellite receiving dishes used for satellite television reception, some of which are located in the townships of Niles, Bronson, Union and Benton. Petitioner sought to challenge the 1999 assessment on all of its personal property located in these assessing jurisdictions. Petitioner filed appeals with the Tax Tribunal. However, petitioner did not protest its assessment to the board of review prior to appealing to the Tax Tribunal.

After holding separate hearings on each petition and considering the testimony and evidence offered, the Tax Tribunal held that it had no jurisdiction in the matters because petitioner failed to protest the assessment at the board of review, a requirement in order to invoke the jurisdiction of the tribunal under MCL 205.735. The Tax Tribunal stated that the "futility" exception did not apply to the facts of any of these cases because petitioner did not offer any evidence indicating that an appearance before the board of review would have been futile.

II. Standard of Review

Appellate review of the Michigan Tax Tribunal's decisions is limited to deciding if the tribunal's factual findings are supported by competent, material, and substantial evidence on the record. Const 1963, art 6, § 28; *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 474; 674 NW2d 529 (2002). In the absence of fraud, this Court reviews the tribunal's legal decisions to determine whether the tribunal erred in applying the law or adopted the wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994).

When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne*, *supra* at 692, 698.

Additionally, this Court reviews the tribunal's decisions to dismiss petitions for failure to comply with the tribunal's rules or orders for an abuse of discretion. *Professional Plaza*, *supra* at 475; *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986).

III. Analysis

The facts and issues of this case are essentially identical to the facts and issues in *Primestar, Inc v Township of Flint*, unpublished opinion per curiam of the Court of Appeals, issued October 18, 2002 (Docket No. 231293), where this Court affirmed the Tax Tribunal's decisions on each of the issues now presented in this case. Nothing on the record indicates that our decision in this case should deviate from that in *Primestar, supra*.

A. Jurisdiction

On appeal, petitioner first argues that the Tax Tribunal erred when it denied jurisdiction over these personal property tax appeals. We disagree.

Petitioner contends that the applicable jurisdictional statute, MCL 205.735, does not apply when protests before the board of review would be futile. Courts have recognized that “a protest of an assessment before the local board of review is clearly required before the tribunal may acquire jurisdiction.” *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). A judicially created exception exists to the rule where an appeal to an administrative agency would be futile. However, “it must be ‘clear that an appeal to an administrative board is an exercise in futility and nothing more than a formal step on the way to the courthouse.’” *Manor House, supra* at 605, quoting *Turner v Lansing Twp*, 108 Mich App 103, 108; 310 NW2d 287 (1981) (emphasis in original).

Here, the board of review could have affected the assessment amount that petitioner challenged. Petitioner does not know and could not have predicted the actions of the board of review. Accordingly, we conclude that petitioner's appeal to the board of review would not have been an exercise in futility and “nothing more than a formal step on the way to the courthouse.” *Manor House, supra* at 605.

B. Due Process

Petitioner next argues that its due process rights have been violated because the Tax Tribunal would not take jurisdiction over the case and, therefore, it has been deprived of its right to have a hearing on the assessment of its property. We disagree.

MCL 211.24c provides a scheme that includes notice and an opportunity to be heard for taxpayers, therefore, its application by the Tax Tribunal is not a violation of petitioner's due process rights. *Dusenbery v US*, 534 US 161; 122 S Ct 694, 701; 151 L Ed 2d 597 (2002).

Moreover, we reject petitioner's challenge to the constitutionality of MCL 211.24c. Statutes are presumed to be constitutional and courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 148 (1999).

C. Fair and Just Treatment

Finally, petitioner argues that it has been treated unfairly and unjustly in violation of the Michigan Constitution. We disagree.

In light of our holding that the Tax Tribunal did not err when it ruled that the futility exception to the appearance requirement did not apply in this case, petitioner's argument that the Tax Tribunal ignored the law, thereby treating petitioner unfairly and unjustly, is without merit. Const 1963, art 1, § 17.

Affirmed.

/s/ William B. Murphy

/s/ Donald S. Owens

/s/ Bill Schuette